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IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:

MELVIN BOGIER,

DEBTOR

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CASE NO. 01-47341-DML-13

MEMORANDUM OPINION AND ORDER

Before the Court is the Motion for Relief from Stay (the "Motion") of Singer Asset Finance Company ("Singer"). The Court held a preliminary hearing on the Motion on December 17, 2001, and requested that Singer and the Debtor (sometimes referred to as "Bogier") submit briefs on the issues presented by the Motion. This Memorandum constitutes the Court's findings of fact and conclusions of law. *See* FED. R. BANKR. P. 7052 and 9014.

I. Background

According to the parties, in the early 1980's, Bogier suffered an injury and entered into an agreement with the County of Los Angeles (the "County") pursuant to which the County agreed to pay a damage award of \$304,665 in monthly installments of \$1,700, through 2004 or Bogier's lifetime.¹ The County initially funded the settlement fully by purchasing an annuity. After the failure of the issuer of the annuity, Aurora National Life Insurance Company ("Aurora") assumed payment of approximately \$1,300.00 of the annuity. The County funded directly to Bogier the balance of \$400.00.

¹It is not clear to the Court whether the payments are to be made for the greater or lesser of these terms

In the summer of 1998 Bogier borrowed money from Singer's predecessor in interest, pledging the payments due to him from Aurora as collateral. Debtor asserts that the County prevented Aurora from paying the monthly annuity payments to Singer on the basis that the County, not Bogier, owned the annuity, and Bogier could not pledge it as collateral.²

Singer brought suit against Bogier³ in late 1999 in the Tarrant County District Court. Following a motion for summary judgment by Singer, Bogier and Singer entered into a consent judgment⁴ which, *inter alia*, includes a finding that Bogier converted property of Singer.

Singer subsequently obtained from a California court a judgment in aid of the Texas judgment. It then acted to garnish payments due to Bogier from Aurora. In response, this Chapter 13 case was commenced. Debtor asserts (and Singer does not deny) that both the County and Aurora have suspended payments to Debtor pending clarifications of the situation. It was in this context that Singer filed the Motion.

II. Discussion

During argument on December 17, 2001, Debtor stated that the asserted pledge to Singer was invalid, and Aurora, at the instance of the County, had refused to honor it since the annuity belonged to the County. Singer's decision to pursue its rights through the cumbersome method of suit in Texas, validation of the judgment in California and a garnishment action against Aurora supports the Court's inference, for purposes of its ruling on the Motion, that the Debtor's assertion is true.

²The documents evidencing the annuity are not before the Court.

³Neither the County nor Aurora were parties to the suit

⁴Debtor claims he was not properly informed or counseled concerning the terms of the consent judgment.

Since it is the County's position that no lien regarding the annuity could be created by Bogier, the Court is not prepared to terminate the automatic stay to allow Singer to proceed with its garnishment action in California. If Singer's lien is invalid, then the stay should be left in place. Not having the annuity (or the settlement between Bogier and the County) before it, the Court is unable to make an independent determination of the validity of the pledge.

The judgment entered by the District Court of Tarrant County does not affect this conclusion. Neither the County nor Aurora were parties to the Texas suit. Moreover, the Tarrant County Court's finding of "conversion"⁵ is inadequate to support a determination that Singer received a valid, unavoidable pledge of anything or any other specific property from Bogier.

The Court also agrees with Debtor that Singer is adequately protected. So long as the Debtor does not receive or expend payments from Aurora, Singer is not harmed, and cause for relief from the stay is not justified under 11 U.S.C. § 362(d)(1) (Singer has not argued for relief under § 362(d)(2)).

Debtor asserts that any rights Singer may have may be avoided under the Bankruptcy Code or the Texas Insurance Code. Debtor also states an intention to bring these issues before the Court.

The Court expresses no opinion concerning the applicability of Texas, as opposed to California, law to any property interests involved. Moreover, the Court questions whether issues respecting the annuity (and the payments to be made to Bogier) can be properly adjudicated without the participation of the County and, perhaps, Aurora.

⁵The judgment does not specify what was converted

The Court is also concerned about its ability to assert jurisdiction over the County. The Court has not researched this question, but it may be that the County is beyond this Court's reach. *See* 11 U.S.C. § 106, which may shelter subdivisions of a state. *See also* 2 COLLIER ON BANKRUPTCY ¶ 102.02[2][a][iii], 15th ed. rev. 2001. The Court expresses no opinion on this issue, but if the County's claims may not be adjudicated here, it may be necessary to address them in the courts of California. It is not clear to the Court at this time whether all issues germane to this bankruptcy case can be resolved without a determination of ownership and rights regarding the annuity.

The Debtor represents that, upon order of this Court, the County and Aurora will turn over payments due to Debtor but presently held by them. This does not mean the County is subject to the Court's jurisdiction. Nevertheless, the Court sees no reason why payments due Debtor should not be held at interest by the Standing Chapter 13 Trustee. The Court expressly concludes that a transfer of payments to the Trustee would not constitute a waiver of any argument the County or Aurora might later make concerning this Court's authority to enter orders affecting them.

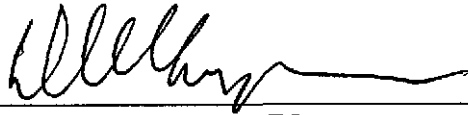
For the foregoing reasons, it is

ORDERED that the motion to Modify Automatic Stay filed by Singer Asset Finance Company, L.L.C., be, and it hereby is, denied, without prejudice to the filing of any motion or other action seeking relief which is consistent with this Memorandum Opinion and Order; and it is further

ORDERED that the County of Los Angeles and Aurora National Life Insurance Co. may turn over to the Standing Chapter 13 Trustee herein any payments held by them which, absent the claims of Singer, would be due and payable now or in the future to Melvin Bogier; and it is further

ORDERED that any funds received by the Standing Chapter 13 Trustee pursuant to the preceding paragraph, be held in an interest hearing account pending further order of this Court.

Signed this the 7th day of February, 2001.

A handwritten signature in black ink, appearing to read "Dennis Michael Lynn", written over a horizontal line.

DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE